IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9965 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MR SK PATEL, AGP for Respondent Nos.1, 3, 4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/10/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 27-7-2000

passed by the District Magistrate, Vadodara in exercise of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene essential to the community.

2. I have heard learned advocate for the petitioner and also perused the material on record. Petitioner has challenged his detention on various grounds. But at the end of arguments, learned advocate for the petitioner has restricted his arguments on the ground that the petitioner has made a representation to the Central Government on 1st September, 2000 by registered post A/D through the jail authority and though the same has been received by the Central Government on 5-9-2000, same has not been decided till 15-9-2000 and according to petitioner, there is a delay of 10 days which has not been properly explained by them and, therefore, the order of detention may be quashed and set aside.

3. It is true that affidavit has been filed on behalf of Union of India which is ordered to be taken on record. It has been admitted in the said affidavit that though the said representation has been received by the Central Government on 5-9-2000, same has been decided on 15-9-2000. No satisfactory explanation is forthcoming for the delay caused in deciding the said representation. As the representation of the petitioner has not been decided in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In view of the facts and circumstances of the case and also in view of the aforesaid judgment, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 27-7-2000 passed against the detenu is hereby quashed and set aside. The detenu-Harshadbhai Dahyabhai Patel is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs. Writ be sent to Junagadh District Jail.

(R.P.DHOLAKIA,J.)

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